

1994

**THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA**

HOUSE OF REPRESENTATIVES

MOOMBA-SYDNEY PIPELINE SYSTEM SALE BILL 1994

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the Minister for Finance,
the Hon Kim C Beazley, MP)**

MOOMBA-SYDNEY PIPELINE SYSTEM SALE BILL 1994

TABLE OF CONTENTS

GENERAL OUTLINE
FINANCIAL IMPACT STATEMENT
NOTES ON CLAUSES

PART 1 - PRELIMINARY

Division 1 - Short title and commencement

- Clause 1 - Short title
- Clause 2 - Commencement

Division 2 - Definitions and binding the Crown

- Clause 3 - Definitions
- Clause 4 - The sale day
- Clause 5 - Act binds the Crown

PART 2 - TRANSFERS ETC. OF ASSETS ETC. TO NEWCO AND THE COMMONWEALTH

Division 1 - Transfer of certain assets etc. relating to the Moomba-Sydney pipeline system from the Authority and Pacenco to Newco

- Clause 6 - Nomination of Newco
- Clause 7 - Staff member of the Authority may consent to being employed by Newco
- Clause 8 - Certain staff members of the Authority to become employees of Newco
- Clause 9 - Subdivision not to affect certain matters relating to transferring staff members
- Clause 10 - Variation of terms and conditions of employment
- Clause 11 - Transferring staff member not to be eligible for reappointment under the *Public Service Act 1922*
- Clause 12 - Certain assets and liabilities of the Authority and Pacenco to become assets and liabilities of Newco
- Clause 13 - References in certain instruments to the Authority or Pacenco to be references to Newco on and after the sale day

Division 2 - Provisions relating to the transfer of dual destination interests to the Commonwealth and Newco

- Clause 14 - Dual destination interests become assets of Newco and the Commonwealth
- Clause 15 - Dual destination instruments that do not create easements
- Clause 16 - Dual destination instruments that create easements

Division 3 - Transfer to the Commonwealth of certain assets and liabilities and provisions relating to certain obligations of the Authority or Pacenco

- Clause 17 - Transfer to the Commonwealth of easements of the Authority or Pacenco that are not specified in the easement agreement
- Clause 18 - Instruments relating to the easements of the Authority or Pacenco that are not specified in the easement agreement
- Clause 19 - Commonwealth-guaranteed debts of the Authority become debts of the Commonwealth
- Clause 20 - Instruments relating to Commonwealth-guaranteed debts
- Clause 21 - Commonwealth and Authority liable to pay certain amounts in relation to Commonwealth-guaranteed debts
- Clause 22 - Commonwealth liable to pay an amount to the Authority equal to Authority's debts to the Commonwealth and set-off of debts
- Clause 23 - Cancellation of debts owed by Pacenco to the Authority

Division 4 - Exemption from State and Territory stamp duties

- Clause 24 - Exemption from certain State and Territory stamp duties

Division 5 - Miscellaneous provisions relating to the transfer of assets etc. under Divisions 1, 2 and 3

- Clause 25 - Certificates in relation to interests in land
- Clause 26 - Certificates in relation to other assets
- Clause 27 - Authority, Pacenco and Commonwealth to take steps necessary to carry out transfers
- Clause 28 - Extraterritorial operation of Subdivision
- Clause 29 - Part to have effect in spite of laws and agreements prohibiting transfer etc.
- Clause 30 - Compensation for acquisition of property

PART 3 - TRANSITIONAL AND SAVING PROVISIONS IN RESPECT OF EMPLOYEES OF NEWCO THAT RELATE TO THE SALE OF SHARES IN NEWCO BY THE COMMONWEALTH

Division 1 - Certain staff members of the Authority taken to have resigned

- Clause 31 - Certain staff members of the Authority taken to have resigned

Division 2 - Transitional and saving provisions in relation to long service leave

- Clause 32 - Definitions
- Clause 33 - Long service leave for employees with less than 10 years service
- Clause 34 - Payments in lieu of long service leave for employees with less than 10 years service
- Clause 35 - Payments on the death of an employee

- Clause 36 - Employee's long service leave credit for the purposes of sections 33 and 34
- Clause 37 - Division not to affect an employee's post-sale long service leave rights
- Clause 38 - Saving - Long Service Leave Act

Division 3 - Transitional and saving provisions relating to the *Safety, Rehabilitation and Compensation Act 1988*

- Clause 39 - Interpretation
- Clause 40 - Transitional provisions relating to the SRC Act that relate to certain Newco body employees
- Clause 41 - Commonwealth liable to meet certain SRC Act liabilities and to be taken to be the employer in certain circumstances under the SRC Act

Division 4 - Transitional and saving provisions in relation to superannuation and other retirement benefits

- Clause 42 - Saving - deferred benefits under the *Superannuation Act 1922*
- Clause 43 - Saving - deferred benefits under the *Superannuation Act 1976*
- Clause 44 - Saving - deferred benefits under the DFRDB Act

Division 5 - Other transitional and saving provisions

- Clause 45 - Transitional maternity leave provisions for maternity leave beginning after the sale day
- Clause 46 - Transitional maternity leave provisions for staff members of the Authority who are on maternity leave immediately before the sale day
- Clause 47 - Cessation of mobility rights

PART 4 - OTHER PROVISIONS RELATING TO THE SALE OF SHARES IN NEWCO BY THE COMMONWEALTH

- Clause 48 - Transitional provision relating to the *Crimes (Superannuation Benefits) Act 1989*
- Clause 49 - Newco not to be taken to be established by the Commonwealth
- Clause 50 - Exemption from State and Territory stamp duties
- Clause 51 - Ending the Authority's liability under the *Commonwealth Borrowing Levy Act 1987*
- Clause 52 - Ending the Authority's liability under the *Commonwealth Guarantees (Charges) Act 1987*

MOOMBA-SYDNEY PIPELINE SYSTEM SALE BILL 1994

GENERAL OUTLINE

The Government has negotiated a conditional sale agreement with The Australian Gas Light Company (AGL) for a 51% purchase of the Moomba-Sydney Pipeline (MSP) System. A competitive tender process for the remaining 49 per cent has been initiated, attracting international and domestic interest.

The Pipeline System transports natural gas from the Cooper Basin gas fields in South Australia to Sydney and regional centres in New South Wales and to the ACT. The pipeline system is currently owned and operated by the Pipeline Authority (TPA) - a Commonwealth Statutory Authority established by the *Pipeline Authority Act 1973*. TPA has approximately 120 staff located variously throughout New South Wales on locations along the Pipeline and at the head office in Canberra.

The main purpose of this Bill is to put in place the necessary framework to complete the sale by facilitating the sale of the assets and liabilities, other than debt, of the Pipeline Authority, and to provide for continuing employment for those staff who accept employment offers from the purchasers. It is proposed that a new pipeline company ("Newco") be established by the Commonwealth to facilitate the sale. On sale day the Commonwealth would sell the shares in Newco to AGL and others and Newco would then pay the purchase price for the assets and liabilities (other than debt) of TPA.

The Bill provides for:

- the assets and liabilities of TPA to be moved from TPA and Pacenco (a TPA subsidiary) to Newco as identified in schedules to the asset purchase agreement
- the transfer of those staff who accept an offer of employment with Newco.
- the transfer of the easements (termed "dual destination interests") from TPA and Pacenco to be jointly in the name of the Commonwealth and Newco
- the Commonwealth to assume the obligation of TPA to meet TPA's private debt commitments and to cancel the public sector debt (ie. debt owed to the Commonwealth)
- the exemption of State and Territory stamp duties on transactions connected with the sale
- the resignation of staff members who do not consent to employment with Newco with the exception of those staff who did not receive an offer of broadly equivalent employment. (Staff who do not receive an offer, or who reject an offer which is considered not to be equivalent, will be eligible for redundancy benefits.)
- transitional and savings provisions in respect of employee entitlements already accrued under Commonwealth legislation for transferring staff and certain obligations of the Authority relating to matters which occurred pre-sale to be accepted by the Commonwealth

The Bill does not provide for the future role of TPA. It is proposed that amendments will be introduced in the Winter sittings covering the operation of TPA post-sale, the windup of its activities and the repeal of the Pipeline Authority Act.

The sale was dependent on the passage of the Interstate Gas Pipelines Bill 1993 and the deferral of this Bill has meant that an alternative access regime will be needed.

FINANCIAL IMPACT STATEMENT

The prime financial impact arising from the sale of the Moomba-Sydney Pipeline System will be the offset to outlays occurring when the sale receipts are credited to the Commonwealth Public Account. The Government expects that total gross proceeds from the sale will be in the range of \$510 to \$550 million.

In return for relinquishing a range of contractual rights AGL will receive compensation of \$30m. AGL will undertake to release the Commonwealth and the Pipeline Authority from all existing contractual commitments in relation to the operation of the Pipeline system, including its rights in relation to gas carriage and over the disposal of the Pipeline.

Other financial implications of the sale include:

- assumption of outstanding Pipeline Authority debt - the Bill provides for the retirement of TPA's debt to the Commonwealth, which is expected to be in the order of \$61m at 30 June 1994. It also provides for the assumption by the Commonwealth of obligations associated with outstanding privately-held inscribed stock debt and bank loans, which are expected to total approximately \$130m at 30 June 1994.
- employee matters - primarily in relation to superannuation, where no further employer contributions will be received from TPA. It should be noted that employer superannuation contributions are classified as financing transactions and thus do not affect the Budget outcome; and
- exemption from certain Commonwealth, State and Territory taxes and fees during the sale process.

In addition, ongoing costs of monitoring TPA faced by the portfolio department (the Department of Primary Industries and Energy) and the Department of Finance will diminish after the sale. It is envisaged that the Bill will be amended early in the winter session to resolve the future of the Pipeline Authority. An appropriation may be necessary to enable it to complete a tidying up of its statutory obligations and other matters.

NOTES ON CLAUSES

PART 1 -PRELIMINARY

Division 1 - Short title and commencement

Clause 1 - Short title

Commencement: Royal Assent

1. Provides for the Act to be cited as the *Moomba-Sydney Pipeline System Sale Act 1994*

Clause 2 - Commencement

Commencement: Royal Assent

2. Subclause 2(1) provides for certain clauses to commence on Royal Assent. These are:

formal clauses relating to procedural matters and interpretation (Clauses 1,2,3,4 and 6); also

consent from a staff member of the Authority to being employed by Newco (Clause 7).

3. Subclause 2(2) allows for the remainder of the provisions to commence on sale day subject to subsection 2(3).
4. Subclause 2(3) provides that if the Commonwealth and Newco do not enter into an agreement for the sale of the MSP on sale day, or if the agreement is entered into but the Commonwealth does not receive the purchase price, then the provisions of the Act referred to in 2(2) do not commence.

Division 2 - Definitions and binding the Crown

Clause 3 - Definitions

Commencement: Royal Assent

5. Provides definitions of terms used in the Bill, in particular the "asset purchase agreement" for the purchase of the assets of the MSP by Newco from the Commonwealth, the "easement agreement" for the ownership of the easements jointly by the Commonwealth and Newco, and "dual destination instruments and interests", being the terms used for these easements. "Newco" is the term used for the body corporate to be nominated by the Minister for the purposes of this Act.

Clause 4 - The sale day

Commencement: Royal Assent

6. Clause 4 declares sale day to be 30 June 1994 or such other day as agreed in writing by the Commonwealth and AGL for the purposes of the Commonwealth-AGL agreement. The Minister for Finance is required to specify the sale day by notice in the Gazette within 14 days after the sale day.

Clause 5 - Act Binds the Crown

Commencement: This provision will commence on the sale day.

7. Clause 5 binds the Crown in right of the Commonwealth, each of the States, the Australian Capital Territory and the Northern Territory.

PART 2 - TRANSFERS ETC. OF ASSETS ETC. TO NEWCO AND THE COMMONWEALTH

Division 1- Transfer of certain assets etc. relating to the Moomba-Sydney Pipeline system from the Authority and Pacenco to Newco

Subdivision 1 - Nomination of Newco

Clause 6 - Nomination of Newco

Commencement: Royal Assent

8. Clause 6 provides for the Minister to nominate by notice in the Gazette before the sale day the body corporate formed, for the purposes of the sale, which is referenced in the Act as "Newco".

Subdivision 2 - Certain staff members to become employees of Newco

Clause 7 - Staff member of the Authority may consent to being employed by Newco

Commencement: Royal Assent

9. Clause 7 provides for offers of employment with Newco to staff members of the Authority. The staff members may consent to being employed with Newco beginning on the sale day. Consent can be revoked before the sale day, in which case the staff member would under Clause 31, be deemed to have resigned on sale day unless the job offer does not involve broadly equivalent employment.

Clause 8 - Certain staff members of the Authority to become employees of Newco

Commencement: This provision will commence on the sale day.

10. Clause 8 provides for staff who have elected to transfer to Newco to do so with the same terms and conditions as applied before the sale day under an award, determination or agreement. The provision has effect subject to Clauses 9 and 10. Clause 10 provides for a variation in such terms and conditions on and after sale day. Staff will be transferred to Newco at the beginning of sale day.

Clause 9 - Subdivision not to affect certain matters relating to transferring staff members

Commencement: This provision will commence on the sale day.

11. Clause 9 provides certainty that staff transferring to Newco have continuity of service, the same entitlement to benefits accrued and recognition of length of service as when an officer or employee of TPA.

Clause 10 - Variation of terms and conditions of employment

Commencement: This provision will commence on the sale day.

12. Clause 10 provides for the terms and conditions of a staff member who is to transfer to the new company to be varied on and after sale day in accordance with a law, award, determination or agreement.

13. The clause provides for the terms and conditions to be varied through omission, addition or substitution of a term or condition.

Clause 11 - Transferring staff member not to be eligible for reappointment under the Public Service Act 1922

Commencement: This provision will commence on the sale day.

14. This clause provides for certainty that staff members who have coverage under Part IV of the Public Service Act 1922 (mobility provisions) will be unable to use the circumstance of transferring to Newco to trigger a right to reappointment to the Public Service.

Subdivision 3 - Transfer of certain assets etc. relating to the Moomba-Sydney Pipeline System from the Authority and Pacenco to Newco

Clause 12 - Certain assets and liabilities of Authority and Pacenco to become assets and liabilities of Newco

Commencement: This provision will commence on the sale day.

15. Clause 12 subsection (1) provides for all assets of the Authority or Pacenco as specified in Schedule 1 to the asset purchase agreement to become assets of Newco on the sale day. Subclause (2) provides for all liabilities of the Authority or Pacenco as specified in Schedule 2 to the asset purchase agreement to become liabilities of Newco on the sale day.

Clause 13 - References in certain instruments to the Authority or Pacenco to be references to Newco on and after the sale day

Commencement: This provision will commence on the sale day.

16. Clause 13 provides that Authority or Pacenco contracts as specified in schedules 3 and 4 to the asset purchase agreement respectively continue to have effect on and after sale day as if a reference to TPA or Pacenco were a reference to Newco.

Division 2 - Provisions relating to the transfer of dual destination interests to the Commonwealth and Newco

Clause 14 - Dual destination interests become assets of Newco and the Commonwealth

Commencement: This provision will commence on the sale day.

17. Subclause 14(1) provides that the easements corresponding to the MSP as specified in the easement agreement become assets in which Newco and the Commonwealth share a joint interest as tenants in common. Subclause 14(2) relates to the easement agreement between Newco and the Commonwealth and provides for Newco to hold such interests on the terms and conditions that apply under that agreement.

Clause 15 - Dual destination instruments that do not create easements

Commencement: This provision will commence on the sale day.

18. Clause 15 provides for dual destination instruments that do not strictly create easements (as specified in the easement agreement) which refer to the Authority or Pacenco be taken to refer after sale day to Newco and the Commonwealth jointly.

Clause 16 - Dual destination instruments that create easements

Commencement: This provision will commence on the sale day.

19. This clause provides that from sale day the purpose of a dual destination instrument that creates an easement is deemed to be for Newco and the Commonwealth to construct, maintain and operate pipelines for the carriage of petroleum in trade or commerce between States or a State and a Territory.

20. Subclause 16(4) provides that any easement rights created by such a dual destination instrument are taken to be rights of Newco and the Commonwealth jointly.

Division 3 - Transfer to the Commonwealth of certain assets and liabilities and provisions relating to certain obligations of the Authority or Pacenco**Clause 17 - Transfer to the Commonwealth of easements of the Authority or Pacenco that are not specified in the easement agreement**

Commencement: This provision will commence on the sale day.

21. This clause provides that all easements of TPA and of Pacenco that are not specified in the easement agreement as being transferred to Newco and the Commonwealth are transferred to the Commonwealth on sale day.

Clause 18 - Instruments relating to the easements of the Authority or Pacenco that are not specified in the easement agreement

Commencement: This provision will commence on the sale day.

22. This clause provides for instruments relating to easements (not specified in the easement agreement) which refer to the Authority or Pacenco to be taken to refer after sale day to the Commonwealth.

23. Subclause 18(2) provides that from sale day the purpose of an instrument is deemed to be for the Commonwealth to construct, maintain and operate pipelines for the carriage of petroleum in trade or commerce between States or a State and a Territory.

24. Subclause 18(3) provides that any easement rights created by such an instrument are taken to be rights of the Commonwealth.

Clause 19 - Commonwealth-guaranteed debts of the Authority become debts of the Commonwealth

Commencement: This provision will commence on the sale day.

25. Clause 19 provides for all the Commonwealth guaranteed borrowings of the Authority to be taken over by the Commonwealth. It provides for the Treasurer to discharge the debt or just assume the responsibility and allows him to appropriate the Consolidated Revenue Fund for this purpose.

Clause 20 - Instruments relating to Commonwealth-guaranteed debts

Commencement: This provision will commence on the sale day.

26. Clause 20 provides for the continued effect after sale of any instruments relating to a Commonwealth-guaranteed debt by ensuring that reference to the Authority is a reference to the Commonwealth.

Clause 21 - Commonwealth and Authority liable to pay certain amounts in relation to Commonwealth-guaranteed debts

Commencement: This provision will commence on the sale day.

27. This clause provides that on sale day the Commonwealth guaranteed debts of TPA are set off between the Commonwealth and TPA and the Consolidated Revenue Fund is appropriated for that purpose. These transactions are necessary to ensure that the assumption of TPA's debt is properly recorded in the Commonwealth's accounts.

Clause 22 - Commonwealth liable to pay an amount to the Authority equal to the Authority's debts to the Commonwealth and set-off of debts

Commencement: This provision will commence on the sale day.

28. Clause 22 provides that on sale day the amount of the Authority's debt to the Commonwealth is set off between the Commonwealth and TPA and the Consolidated Revenue Fund is appropriated for that purpose. These transactions are necessary to ensure that the discharge of TPA's public debt is properly recorded in the Commonwealth's accounts.

Clause 23 - Cancellation of debts owed by Pacenco to the Authority

Commencement: This provision will commence on the sale day.

29. This clause cancels on sale day all debts owed by Pacenco to the Authority.

Division 4 - Exemption from certain State and Territory stamp duties

Clause 24 - Exemptions from certain State and Territory stamp duties

Commencement: This provision will commence on the sale day.

30. This provision exempts from State and Territory stamp duty a variety of transactions to do with exempt matters which have been defined as relating to the transfer of the assets and liabilities of TPA and Pacenco to Newco, the transferring of the easements to the Commonwealth and Newco, the assumption and cancellation by the Commonwealth of TPA's long term debts and to other matters associated with the operation of Part 2 of the Act. In relation to Newco, the provision exempts transactions relating to the actual transfer of the assets and does not exempt Newco from any taxes relating to its operations after the sale, for example, State licence fees for the operation of the pipeline.

31. The Minister for Finance, or an authorised delegate may certify that a matter is exempt or has been done because of, or for a purpose connected with, a specified exempt matter. Such a certificate is conclusive evidence of that matter unless the contrary is established.

Division 5 - Miscellaneous provisions relating to the transfer of assets etc. under Divisions 1, 2 and 3

Clause 25 - Certificates in relation to interests in land

Commencement: This provision will commence on the sale day.

32. This clause provides a mechanism for the registration of the easements (in which the Commonwealth and Newco are to share an interest jointly) or any real property. Such registration is to be in the appropriate manner applicable to the State or Territory concerned.

33. Subclause 25(2) provides that the Land Registration official may register the easement or real property in the same way which dealings in land of that kind are registered. An authorised person may give a certificate as to the transfer of real property or easements and such a document is taken to be valid unless the contrary is established.

Clause 26 - Certificates in relation to other assets

Commencement: This provision will commence on the sale day.

34. This clause provides a mechanism for the registration of assets. Such registration is to be in the appropriate manner applicable to the State or Territory concerned.

35. Subclause 26(2) provides that a relevant assets official may register the asset in the same way dealings in assets of that kind are registered. An authorised person may give a certificate as to the transfer of assets and such a document is taken to be valid unless the contrary is established.

Clause 27 - Authority, Pacenco and Commonwealth to take steps necessary to carry out transfers

Commencement: This provision will commence on the sale day.

36. This provision requires that TPA, Pacenco and the Commonwealth take the necessary steps to ensure that the assets and liabilities have been properly transferred in accordance with the intention of this Part of the Act.

Clause 28 - Extraterritorial operation of subdivision

Commencement: This provision will commence on the sale day.

37. This clause provides for the operation of this part of the Act to have effect in respect of matters outside Australia.

Clause 29 - Part to have effect in spite of laws and agreements prohibiting transfer etc.

Commencement: This provision will commence on the sale day.

38. This provision strengthens the effect of this Part of the Act and ensures that it has effect in spite of any other law or document or in spite of the failure to receive the consent of a person in a particular respect that is otherwise required.

Clause 30 - Compensation for acquisition of property

Commencement: This provision will commence on the sale day.

39. This clause provides for compensation to be paid by the Commonwealth should property be acquired through the operation of Part 2 of the Act from a person on otherwise than just terms.

**PART 3 - TRANSITIONAL AND SAVING PROVISIONS IN RESPECT OF
EMPLOYEES THAT RELATE TO THE SALE OF SHARES IN NEWCO
BY THE COMMONWEALTH**

Division 1 - Certain staff members of the Authority taken to have resigned

Clause 31 - Certain staff members taken to have resigned

Commencement: This provision will commence on the sale day.

40. This clause is aimed at discouraging those TPA employees who receive an offer of employment from Newco from rejecting that offer in order to render themselves eligible for the benefits associated with redundancy. Under clause 31, those employees who do not take up an offer of broadly equivalent employment and those who revise their consent to be employed by Newco will be taken to have resigned from the Authority on sale day (and thus attract only the lesser benefits associated with resignation) unless exempted.

41. Subclause 31(3) specifies that an employee may be exempted if he/she rejects an employment offer carrying terms and conditions which are, on the whole, not equivalent to those which prevailed with the Authority immediately before the sale day.

42. Those employees exempt under subclause 31(3) and those who do not receive an offer will become redundant unless they are able to successfully exercise mobility rights under the *Public Service Act 1922*.

Division 2 - Transitional and saving provisions in relation to long service leave

43. Transitional and saving provisions continue or modify certain obligations of Newco in respect of staff who have transferred. They also allow for the completion of matters commenced pre-sale and preserve certain employee benefits associated with pre-sale service that would otherwise be foregone because of the sale.

44. The saving provisions also recognise the post-sale service of specific categories of employees as public employment for the purposes of qualifying for certain deferred pension benefits.

Commencement: Provisions under this Division are to commence on Royal Assent and take effect on the sale day. It covers the preservation of long service leave benefits accrued to point of sale and preserves existing long service leave entitlements.

45. TPA employees pre-sale accrue long service leave entitlements (3 months for every 10 years service) under the *Long Service Leave (Commonwealth Employees) Act 1976* (Long Service Leave Act).

46. For most employees, pre-sale service of less than 10 years will not normally qualify for any long service leave entitlement under the Long Service Leave Act.

47. To ensure equity, transitional provisions in this Division provide that when those employees either complete 10 years combined service with TPA (and/or other public sector employment) and with Newco or a Newco body, or cease to be employees in circumstances under which Long Service Leave Act entitlements would have applied had the assets of TPA not been sold, this Bill ensures long service leave benefits at the Long Service Leave Act standard in relation to service before the sale day.

48. Thus, under the transitional provisions, a TPA employee with 9 years service as at sale day could be granted long service leave of 9/10 of 3 months once the employee has served a total of 10 years in the public sector and with Newco or Newco body. The employee's long service leave entitlements relating to service after the sale day will accrue and be credited according to the long service leave regime in operation after the sale day.

Clause 32 - Definitions

Commencement: This provision will commence on the sale day.

49. This clause provides for the definition of terms used in this Division and for expressions used in this Division to have the same meaning as in the Long Service Leave Act. It includes a definition of the "combined service period" of an employee to be the total of the employee's service in the public sector before the sale day and the employee's service with Newco after sale.

Clause 33 - Long service leave for employees with less than 10 years service

Commencement: This provision will commence on the sale day.

50. This clause provides for the granting of long service leave for the leave accrued under the Long Service Leave Act prior to sale for employees who at point of sale have less than 10 years service.

51. The provision applies to a person who was an employee of TPA immediately before the sale day and whose period of service at sale day was less than 10 years. If the employee continues to be employed by Newco or a Newco body until his or her combined service period is at least 10 years Newco may grant the employee long service leave.

52. Subclause 33(4) provides for granting of the long service leave in the circumstances of retirement or retrenchment as long as the employee has a combined service period of at least one year. Leave granted under subclause 4 is to be taken so as to expire immediately before the employee is to retire or be retrenched.

53. Subclause 33(7) provides for the application of section 20 of the Long Service Leave Act to calculate the rate of salary to be used in working out the full salary of an employee for the purposes of this provision.

Clause 34 - Payments in lieu of long service leave for employees with less than 10 years service

Commencement: This provision will commence on the sale day.

54. Clause 34 sets out the circumstances in which an employee can be paid an amount in lieu of long service leave accrued under the Long Service Leave Act for employment with TPA before the sale day. The provision allows for an employee to elect not to be paid under this clause or to accept a lesser amount. Such request to be made to the employer in writing. The rate of salary to be used for this provision to be the rate applicable to an employee under section 21 of the Long Service Leave Act, and the amount of leave is determined by subclause 36(2).

55. This provision may apply to employees on reaching minimum retirement age, or retrenchment, or cessation due to ill health. It also covers cessation of employment when an employee has a combined service period of at least 10 years.

Clause 35 - Payments on the death of an employee

Commencement: This provision will commence on the sale day.

56. This clause provides for the payment to a deceased employee's dependant (or dependants) of the amount that would have been payable to the employee under clause 34 if on the day of the employee's death, the employee had stopped being an employee on or after reaching minimum retirement age. This provision applies as long as immediately before the sale day the employee had less than 10 years service; or at the time of death had a combined service period of at least one year.

Clause 36 - Employee's long service leave credit for the purposes of sections 33 and 34

Commencement: This provision will commence on the sale day.

57. This clause defines the long service leave credit of TPA employees as being equal to the employee's long service leave under the Long Service Leave Act as at the sale day.

Clause 37 - Division not to affect an employee's post-sale long service leave rights

Commencement: This provision will commence on the sale day.

58. This clause provides certainty that the application of the provisions in this Division do not effect an employee's post-sale long service leave rights. Long service leave associated with service with Newco after the sale day will be a matter for Newco and its employees to agree in the context of relevant State and Territory legislation.

Clause 38 - Saving - Long Service Leave Act

Commencement: This provision will commence on the sale day.

59. This clause ensures that accrued long service leave credits, arising from pre-sale service with TPA under the Long Service Leave Act are retained post-sale. For those employees who have qualified for long service leave under the Long Service Leave Act the credit accrued as at sale day is preserved at that point.

Division 3 - Transitional and saving provisions relating to the Safety, Rehabilitation and Compensation Act 1988

Clause 39 - Interpretation

Commencement: This provision will commence on the sale day.

60. This clause provides for the expressions used in this Division to have the same meaning as in the *Safety, Rehabilitation and Compensation Act 1988* ("SRC Act").

Clause 40 - Transitional provisions relating to the SRC Act that relate to certain Newco body employees

Commencement: This provision will commence on the sale day.

61. Clause 40 provides that the SRC Act (ie. the rights and obligations of the employees, TPA and Comcare) continues to apply only as set out in this Division.

62. This clause provides that the SRC Act continues to apply to employees of a Newco body who were employees of the Authority immediately before the sale day. It applies on and after sale day in respect of claims arising from injuries suffered by employees of TPA while such employees prior to the sale day and includes employees of TPA who were injured while employees of TPA but who ceased to be employees of TPA before the sale day.

Clause 41 - Commonwealth liable to meet certain SRC Act liabilities and to be taken to be the employer in certain circumstances under the SRC Act

Commencement: This provision will commence on the sale day.

63. The Commonwealth is liable to discharge the liabilities of TPA under the SRC Act and shall be deemed to be the employer of any employees of TPA before the sale date for the purposes of the Act. It is envisaged that responsibilities of TPA under the SRC Act for liabilities prior to 1 July 1989 would be administered by Comcare under a special funding arrangement with the Commonwealth.

Division 4 - Transitional and saving provisions in relation to superannuation and other retirement benefits

Clause 42 - Saving - deferred benefits under the *Superannuation Act 1922*

Commencement: This provision will commence on the sale day.

64. This clause applies to an employee of Newco who immediately before the sale day was a staff member of TPA and who up to sale day was accumulating service with TPA as service in public employment in order to qualify to obtain deferred benefits under the *Superannuation Act 1922* (a total of 20 years is required in most cases).

65. The clause provides that employees who elected to preserve their superannuation rights (and deferred their benefits) under the *Superannuation Act 1922* will be able to continue to count employment with Newco or a Newco body after sale day as public employment for the purposes of the Act.

Clause 43 - Saving - deferred benefits under the *Superannuation Act 1976*

Commencement: This provision will commence on the sale day.

66. Commonwealth employees who cease to be members of the Commonwealth Superannuation Scheme before reaching a total of 5 years contributory membership, may qualify to defer their benefits if they remain in public employment for the balance of the 5 year period.

67. Similarly to clause 42 (*Superannuation Act 1922*) and clause 44 (*Defence Force Retirement and Death Benefits Act 1973*, the DFRDB Act), this clause ensures that employees who have elected to preserve their superannuation benefits are able to continue counting post-sale service with Newco or a Newco body as public employment. A period of employment with one of these bodies will therefore count towards the five year qualifying period for eligibility for deferred benefits even after the sale day.

Clause 44 - Saving - deferred benefits under the DFRDB Act

Commencement: This provision will commence on the sale day.

68. This clause relates to the DFRDB Act. Current employees of TPA who were formerly members of the Defence Force and who have elected to take deferred DFRDB benefits are required to complete an aggregate of 20 years (in most circumstances) in the Defence Force or in subsequent public employment to enable benefits to be paid.

69. In the absence of a specific provision, an employee who has not served the required period prior to the Commonwealth ceasing to have a controlling interest in TPA would lose his or her entitlement to the benefits available under the DFRDB Act.

70. Subclause 44(1) is intended to enable former members of the Defence Force who:

- were employed by TPA,
- had deferred their benefits under the DFRDB Act, and
- were accruing service in public employment with TPA or a TPA subsidiary,

to count employment with Newco or a Newco body as public employment even after the sale day.

71. These employees would be entitled to their deferred benefits if they remain with Newco or Newco body (or in other public employment) until the qualifying period (usually 20 years) is completed.

Division 5 - Other transitional and saving provisions**Clause 45 - Transitional maternity leave provisions beginning after the sale day**

Commencement: This provision will commence on the sale day.

72. TPA employees are currently able to avail themselves of provisions under the *Maternity Leave (Commonwealth Employees) Act 1973* (the Maternity Leave Act) which provide for leave of up to 12 months, 12 weeks of which is on full pay, the remainder without pay unless other leave is granted.

73. This clause will preserve the entitlements of female officers and employees of Newco who were employees of TPA pre-sale to apply for and be granted leave under the Maternity Leave Act provided that such leave is begun within 12 months of the sale day.

Clause 46 - Transitional maternity leave provisions for staff members who are on maternity leave immediately before the sale day.

Commencement: This provision will commence on the sale day.

74. This clause preserves the existing rights of those employees of TPA who accept employment with Newco and who are currently on maternity leave.

Clause 47 - Cessation of mobility rights

Commencement: This provision will commence on the sale day.

75. This clause extinguishes the mobility rights of employees of TPA who have coverage under Part IV of the *Public Service Act 1922* and the repealed *Officers' Rights Declaration Act 1928* and who transferred to Newco or who were taken to have resigned on sale day. A small number of TPA staff have rights under the *Officers' Rights Declaration Act* which allows for reappointment to the Australian Public Service. Others have second tier rights of which the most significant element is the opportunity to have special consideration given to reappointment to the Australian Public Service in the event of redundancy. Transferring staff also stop being members of the Australian Public Service.

PART 4 - OTHER PROVISIONS RELATING TO THE SALE OF SHARES IN NEWCO BY THE COMMONWEALTH

Clauses 48 - Transitional provision relating to the *Crimes (Superannuation Benefits) Act 1989*

Commencement: This provision will commence on the sale day.

76. This clause ensures that the *Crimes (Superannuation Benefits) Act 1989* continues to apply in relation to corruption offences committed by employees of TPA, while an employee of TPA, prior to sale day.

77. Where a person who was an employee of TPA commits a corruption offence while employed by TPA before the sale day an order will be able to be made against that person even after the sale day as if a Newco body were a Commonwealth Authority. This is necessary because the Act can only apply if the employer is the Commonwealth or a Commonwealth Authority.

78. Subclause 48(2) ensures a superannuation order in relation to employer contributions can only be made against contributions which are paid or payable before the sale day. It cannot be made against contributions paid after the sale day.

79. Subclause 48(3) provides that where an order pursuant to paragraph 19(3) (d) of the *Crimes (Superannuation Benefits) Act 1989* is made by the court in respect of funds paid into the Consolidated Revenue Fund before the sale day by or on behalf of the Authority the order must specify that the amount is to be retained by the Commonwealth. This provision relates to funds not yet paid to the employee from the superannuation scheme.

80. Subclause 48(4) provides that where a corruption offence was committed by an employee of the Authority before the sale day and that person was paid benefits before, on or after the sale day out of the Consolidated Revenue Fund then despite paragraph 19(4)(b) of the *Crimes (Superannuation Benefits) Act 1989* an order under that paragraph may only specify that an amount equal to the total benefits paid out of the Consolidated Revenue Fund is paid to the Commonwealth. This provision relates to funds which have already been paid to the employee from the superannuation scheme.

81. Subclause 48(5) ensures that an order cannot be made against the superannuation scheme of the employee if his or her corruption offence is committed after the sale day.

Clause 49 - Newco not to be taken to be established by the Commonwealth

Commencement: This provision will commence on the sale day.

82. This clause is intended to ensure that on and after the sale day Newco is not to be taken to be established by or under an Act, or to be established by the Commonwealth. This is to ensure that after the sale day laws which are applicable to companies established by or under an Act or established by the Commonwealth will not apply to Newco unless such laws expressly provide otherwise.

83. The provision does not affect the operation of any law prior to the commencement of this clause.

Clause 50 - Exemption from State and Territory stamp duties

Commencement: This provision will commence on the sale day.

84. This provision exempts from State and Territory stamp duty a variety of transactions relating to the sale of the Commonwealth's shareholding in Newco including:

- . the transfer of the Commonwealth's shares in Newco to another person and agreements relating thereto;
- . the receipt of money by the Commonwealth, or another person acting on behalf of the Commonwealth, from persons who are, on or after the sale day, buying shares in Newco.

85. The Minister for Finance, or the Secretary to the Department of Finance, or an authorised delegate (who must be a member of the Senior Executive Service of the Department of Finance) may certify that a matter is exempt or has been done because of, or for a purpose connected with or arising out of, a specified exempt matter. Such a certificate is conclusive evidence of that matter.

Clause 51 - Ending the Authority's liability under the *Commonwealth Borrowing Levy Act 1987*

Commencement: This provision will commence on the sale day.

86. This clause provides that after the sale day TPA is liable to pay a levy imposed by the *Commonwealth Borrowing Levy Act 1987* on borrowings incurred before the sale day which are due and payable before the sale day but does not have to pay an amount imposed by the levy in respect of such borrowings after the sale day.

Clause 52 - Ending the Authority's liability under the *Commonwealth Guarantee (Charges) Act 1987*

Commencement: This provision will commence on the sale day.

87. This clause provides that after the sale day TPA is not liable to pay any levy imposed by the *Commonwealth Guarantee (Charges) Act 1987* in respect of obligations incurred under that Act.



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